

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF PORTLAND AND THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON REGARDING WETLAND
MITIGATION AT WESTMORELAND PARK**

TriMet Agreement No. GH110434BC

This Intergovernmental Agreement (“Agreement”) is between the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) and the City of Portland (“City”), acting by and through Bureau of Parks and Recreation, (“Parks”). TriMet and Parks may be collectively referred to herein as the “Parties” and individually as a “Party”.

RECITALS

- A. TriMet and Parks are authorized to enter into this Agreement pursuant to the provisions of ORS 190.010.
- B. TriMet is planning to construct the Portland-Milwaukie Light Rail Project (“Project”), a 7.3-mile alignment that will connect Portland State University in downtown Portland, inner Southeast Portland, Milwaukie, and north Clackamas County. The north end of the Project will connect to the I-205/Portland Mall’s terminus at Portland State University, serve the South Waterfront district, cross over the Willamette River with a new transit bridge, serve the OMSI district, and then proceed south to Park Avenue in Milwaukie. The Project will consist of ten transit stations, including one at the Bybee Blvd. Bridge, which is adjacent to Westmoreland Park (“Westmoreland” or “park”). The City is a key funding partner in this Project.
- C. The Project published its Final Environmental Impact Statement in October 2010, and the Federal Transit Administration (“FTA”) issued a Record of Decision on November 29, 2010. TriMet received approval to enter Final Design on March 29, 2011.
- D. The Project and its alignment will cause unavoidable, *de minimis* environmental impacts to Crystal Springs Creek (“Crystal Springs”), which is located beneath and adjacent to the Project’s alignment on SW McLoughlin Blvd (the Project proposes spanning over Crystal Springs Creek). These impacts necessitate environmental mitigation. Crystal Springs is a tributary of lower Johnson Creek in southeast Portland. The creek originates from a spring near Reed College, which is an area that was once primarily marshy wetlands and provided important rearing and refuge habitat for salmon, and foraging and nesting sites for beavers, birds, turtles, frogs, and other wildlife. Crystal Springs is designated as critical habitat because it is home to several species listed as threatened under the Endangered Species Act, including coho and Chinook salmon, and steelhead trout.
- E. The park itself enjoys a rich history dating back to 1909, when it began as part of a residential subdivision that was subtracted from Ladd estate’s Crystal Spring Stock Farm. In the 1930s, it existed as a dairy, brickyard, and airstrip known as Broom Field. As area

development increased, residents requested the empty fields be turned into a city park. In the late 1930s, with the assistance of the Federal government, the City began working on the park and developed a casting pond, a model yacht lagoon, a fly caster's club house, bridges, and athletic fields. In the 1940s, a baseball field and wooden stadium were built at the park, now known as Sckavone Stadium. In the late 1940s and into the early 50s, lawn bowling facilities and surfaces for croquet were constructed, along with a picnic shelter and children's wading pool. However, Crystal Springs also has a strong history of overflowing its banks and flooding the park and inundating picnic areas, playgrounds, and paths. Beginning in the 1980s, residents began complaining about swimming in the casting pond and Crystal Springs because of water quality and safety issues due to flooding, which led to the concrete filling of the duck pond. The receding waters from the decades of flooding have left behind damaged stream edges and dying trees, compromising the ecological integrity of Westmoreland as an important wildlife habitat.

- F. To address these issues, the City has developed a master plan to revitalize Westmoreland and Crystal Springs. The City's master plan for the park includes, among others, improving the natural resources values along Crystal Springs by converting the concrete duck pond to its natural state, which is a braided stream with wetland areas. The City and the Army Corps of Engineers ("Corps") advanced a revitalization plan in 2004, which resulted in a Section 106 "adverse effect" from the Oregon State Historic Preservation Office ("SHPO"). In other words, SHPO was concerned that the revitalization plan would put Westmoreland in jeopardy of not being eligible for a listing in the National Register of Historic Places.
- G. TriMet and the City have been collaborating on a plan to help the Project mitigate unavoidable impacts to Crystal Springs and allow the City to further its master plan to revitalize Westmoreland and Crystal Springs. To that end, the City has encouraged TriMet to be a funding partner in this effort and direct Project wetland mitigation funds to this site. With the support of the federal and state natural and historic resources agencies, TriMet agrees to direct Project wetland mitigation funds to Westmoreland and Crystal Springs for 1.1 acres of mitigation credit. Implementation of the revitalization/mitigation plan may be conducted in part by the Corps, using federal funds.

NOW THEREFORE, in consideration of the above recitals and mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. TriMet Obligations.

- a. TriMet will provide to the City Two Hundred Thousand Dollars and No/100 (\$200,000.00) to satisfy the Project's mitigation obligations at Westmoreland Park and Crystal Springs Creek. This funding commitment will allow the City to advance, with SHPO's approval, the conversion of the duck pond to a wetland and natural resource site ("Westmoreland Project"). The \$200,000 will be available to the City from TriMet, on a reimbursement basis, after the City has

signed the construction contract for the Westmoreland Project, and has incurred the costs.

- b. TriMet has entered into a Memorandum of Agreement (“MOA”) with SHPO to commit to the mitigation in a manner that preserves the historic integrity of the park. The MOA is attached as Exhibit A, and incorporated by this reference. TriMet’s requirements under this MOA includes the development of and placement of an interpretative plaque at the Bybee Blvd. Bridge that describes historical information about Westmoreland Park and the duck pond.
- c. TriMet has prepared the necessary design drawings for the Joint Permit Application (“JPA”) Clean Water Act Section 404 permit, dated June 2010, to allow for the wetland mitigation for the Portland-Milwaukie Project. The City, the Corps, or both will secure all permits (including the 404 permit) for the construction of the modifications to the duck pond.

2. City Obligations.

- a. The City will convert the duck pond into a wetland and natural resource site. Approximately one and one-tenth (1.1) acres of this converted area will be used as wetland mitigation for the Portland-Milwaukie Project impacts and will be constructed in compliance with the JPA drawings submitted in June 2010. The design and construction will be conceptually based on Exhibit B.
- b. The City will comply with the entirety of Section III. B Westmoreland Park of the signed MOA (Exhibit A) between TriMet and the SHPO. Without limiting the generality of the foregoing, the City shall:
 - i. Prepare, by 2013, the appropriate documentation for Westmoreland Park according to Oregon SHPO documentation standards, set out in Section III.B.
 - ii. Publish the appropriate documentation, as described above, of the park’s history on the City of Portland website for a duration of not shorter than June 2013 to December 2015. The website will be professionally designed.
 - iii. Participate in the development of an interpretive panel or display at the Bybee Station, describing the historic attributes and features of Westmoreland Park, including the Duck Pond and its relationship to Depression-era projects, and also the general timeline for development of Westmoreland Park and adjacent neighborhoods of the City by date of Project completion (December 2015). The City will consult with a historian that meets Secretary of Interior Standards and will ask SHPO to comment to the design.
 - iv. Prepare National Register nomination materials for a different park within the City, and formally submit these materials to the SHPO for approval. The City will (i) consult with SHPO to determine whether the selected property is indeed eligible, (ii) provide draft documents to SHPO for comment, and (iii) make all

necessary revisions to meet the requirements of the National Park Service for National Register nominations. Nomination materials are to be completed within 24 months of the execution of this agreement. This stipulation will be considered complete once the SHPO has found the nomination to be complete and ready for submission to the Keeper of the National Register.

- c. The City will be responsible for funding the activities outlined above in Paragraph 2(b), except for the funding for the design, manufacturing, and installation of the interpretive panel at the Bybee Station, which will be the responsibility of TriMet.
- d. The City will seek all permits necessary to complete the revitalization effort.
- e. The City will develop the revitalization final design and construction plans and directly construct or partner with the Corps to construct all improvements by December 31, 2013.
- f. The City will monitor and warranty the wetland plants for a period of five (5) years, or as required by the City's or Corps' JPA permit, after all improvements have been constructed.
- g. The City will prepare as-built drawings and reports and submit annual monitoring reports, as required, to the Corps or Department of State Lands, for a period of five (5) years, or as required by the City's or Corps' JPA, after all improvements have been constructed.
- h. The City will maintain the functions and values as prescribed by the Corps in the Section 404 permit.
- i. The City shall secure and register the required environmental easement for the mitigation if required by compliance for permit conditions.
- j. The City's obligations under this Agreement are expressly conditioned on funding being secured, either through federal funding through the Corps or other state or local funding sources.

3. **Term.** This Agreement begins on the date signed by all Parties ("Effective Date") and terminates five years after the date of final completion of the construction of the Westmoreland Project.
4. **Invoices.** TriMet shall reimburse City's efforts to prepare the work outlined in this Agreement, in an amount not to exceed Two Hundred Thousand Dollars and No/100 (\$200,000.00), unless otherwise agreed by the Parties in writing. TriMet shall reimburse the City within thirty (30) days of the receipt of a proper invoice. The City may submit no more than one (1) invoice per month. Invoices shall contain reasonable detail and itemization, and must be based on actual costs incurred by the City during the applicable billing period. Other direct costs will be reimbursed at cost, with no markup. Invoices must be supported by sufficient documentation to meet audit standards in accordance with generally accepted accounting principles. Unless disputed in good faith by TriMet, any amounts not paid when due shall accrue interest at the Oregon statutory rate of nine percent, as stated in ORS 82.010.

Invoices must contain the contract number of this Agreement (as set forth above), and the applicable billing period. All invoices must be submitted to TriMet's Finance Department as follows:

TriMet Finance Department
 Attn: Accounts Payable
 4012 SE 17th Ave
 Portland, OR 97202

Failure to strictly comply with this provision may result in a delay in payment.

5. **Waiver and Nonwaiver.** A waiver by one Party of a right to a remedy for breach of this Agreement by the other Party shall not be deemed to waive the right to a remedy for a subsequent breach by the other Party. Except as otherwise expressly provided in the Agreement, the signing and execution of this Agreement shall not waive any of the legal rights of either Party.

Both Parties having had the opportunity to consult an attorney regarding the provisions of this Agreement, the Parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the Party that drafted the ambiguous provision.

6. **No Other Representations.** The Parties acknowledge that no other party, nor agent, nor attorney of any other party, has made any promise, representation or warranty, express or implied not contained in this Agreement concerning the subject matter of this Agreement to induce this Agreement, and the Parties acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained in this Agreement.
7. **Severability/Survivability.** If any of the provisions contained in this Agreement is held by a court of law or arbitrator to be illegal, invalid, or unenforceable, the enforceability of

the remaining provisions will not be impaired, and the Parties shall negotiate an equitable adjustment of this Agreement so that the purposes of this Agreement are effected.

8. **Notices and Communication.** All notices and other communications concerning this Agreement shall be written in English and shall bear the contract number assigned by TriMet as set forth above in this Agreement. Notices and other communications may be delivered personally, by facsimile, by express delivery service (e.g. UPS, FedEx), by electronic mail (e-mail), or by regular, certified or registered mail to the address or facsimile number provided below with respect to each of the Parties, as follows:

TriMet

Capital Projects
Attn: Dave Unsworth
710 NE Holladay Street
Portland, Oregon 97232
unsworld@trimet.org

City

Brett Horner
Parks and Recreation
1120 SW 5th Avenue
Portland, OR 97201
Brett.Horner@ci.portland.or.us

9. **Assignment and Subcontracting.** The City shall not assign any of its rights under this Agreement without the prior written consent of TriMet. Any attempted assignment of rights or delegation of duties by the City without the written consent of TriMet shall be void. The City shall include in any subcontract any provisions that the Parties agree are necessary to make all of the provisions of this Agreement fully effective. It is acknowledged that City will subcontract out all or a portion of the work outlined herein and that no further consent from TriMet is required for such subcontracting.
10. **Compliance with Other Laws and Regulations.** The parties recognize that funds provided by the FTA will be used to pay for a portion of the Westmoreland Project. Each party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA contractors. Furthermore, the City agrees to incorporate by reference the Federal Requirements set forth in Exhibit C into the contracts of all subcontractors or third party contractors used by the City on the Westmoreland Project.
11. **Section Headings and Other Titles.** The Parties agree that the section headings and other titles used in this Agreement are for convenience only, and are not to be used to

interpret this Agreement.

12. **Integration, Modification, Administrative.** This Agreement includes the entire agreement of the Parties on the subject matter hereof and supersedes any prior discussions or agreements regarding the same subject. This Agreement may not be modified or amended except by written agreement of the Parties.
13. **Authority.** The representatives signing on behalf of the Parties certify they are duly authorized by the Party for whom they sign to make this Agreement.
14. **Performance; Reporting Requirement.** The City shall maintain fiscal records pertinent to this Agreement for at least three (3) years following completion of the work under this Agreement. The City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles applicable to public entities. In addition, the City shall maintain all other records pertinent to this Agreement in such a manner as to clearly document its performance hereunder.
15. **Indemnification.** To the extent permitted by the Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution, Article XI, Sections 7 and 9, as the same may be amended from time to time, each Party shall defend, indemnify and hold harmless the other ("Indemnified Party") and its directors, officers, agents, and employees against all claims, demands, actions, and suits brought against the Indemnified Party and arising from the fault or negligence of the other Party to this Agreement.
16. **No Third-Party Beneficiaries.** TriMet and the City are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.
17. **Mediation.** The Parties, prior to any litigation, shall attempt to settle any dispute arising out of this Agreement, or the breach thereof, through mediation in the City of Portland, Oregon. The Parties will attempt to agree on a single mediator. The cost of mediation shall be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the Parties otherwise agree to a different schedule. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity.
18. **Entire Agreement; Amendments.** This Agreement, including the Recitals and all exhibits incorporated herein, shall constitute the entire agreement between the Parties. There are no understandings, agreements, or oral or written representations not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. The Parties, by the signatures of their authorized representatives


below, acknowledge having read and understood the Agreement and agree to be bound by its terms and conditions.

- 19. **Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties hereto.
- 20. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

AGREED AND ACCEPTED

TRIMET

CITY

By: 

By: 


Daniel W. Blocher, PE
Executive Director, Capital Projects

Zari Santner
Portland Parks and Recreation Director

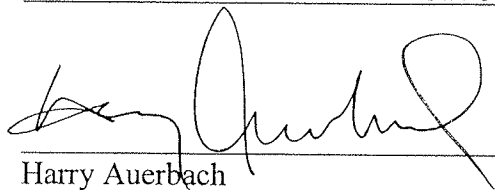
Date: 4.26.11

Date: 5/2/11

APPROVED AS TO FORM FOR TRIMET


Britney Colton
Deputy General Counsel
TriMet

APPROVED AS TO FORM FOR CITY


Harry Auerbach
Chief Deputy City Attorney

MEMORANDUM OF AGREEMENT

**AMONG
THE FEDERAL TRANSIT ADMINISTRATION,
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT (TRIMET), AND OREGON STATE
HISTORIC PRESERVATION OFFICE (SHPO)**

**IMPLEMENTING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
REGARDING THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT**

RECITALS:

By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or others state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

By the authority granted in ORS 366.558, the State of Oregon may enter into cooperative agreements with the United States Federal Government for the performance of work on projects with the allocation of costs on terms and conditions and

WHEREAS the Portland-Milwaukie Light Rail project (Project) involves the development of light rail extending from Portland, Oregon, to the City of Milwaukie and north Clackamas County, and includes a new Willamette River Bridge and other facilities needed in support of the light rail system; and

WHEREAS the Project has involved the preparation of Draft, Supplemental and Final Environmental Impact Statements (DEIS, SDEIS and FEIS), in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), as amended, and pursuant to 23 Code of Federal Regulations (CFR) Part 771, for the development of light rail extending from Portland, Oregon, to the City of Milwaukie and north Clackamas County, and including a new Willamette River Bridge and other facilities needed in support of the light rail system; and

WHEREAS the Federal Transit Administration (FTA) is the NEPA lead agency for the Portland-Milwaukie Light Rail Project, located in Multnomah and Clackamas Counties, Oregon, with Metro and TriMet as local lead agencies; and

WHEREAS, FTA has determined that the Project is an undertaking, as defined in 36 CFR § 800.16(y), subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f and its implementing regulations, 36 CFR § 800; and

WHEREAS, FTA has determined that construction and operation of the Project will result in effects to historic properties and has consulted with the Oregon State Historic

Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Parts 800.6 and 800.14; and

WHEREAS, "Signatories" means the required and invited signatories (FTA, Oregon SHPO, TriMet); "Concurring Parties" means Consulting Parties that have signed this Memorandum of Agreement (Agreement); and "Consulting Parties" means Signatories, Concurring Parties, all interested and affected tribes, and other interested parties consulted on the Project, regardless of whether they agreed to sign the Agreement; and

WHEREAS, the Federal Transit Administration and the Oregon SHPO have agreed to be signatory parties to this Agreement; and

WHEREAS, federally recognized tribes including the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians, Confederated Tribes of the Warm Springs Reservation of Oregon, and Cowlitz Indian Tribe, and a non-federally recognized tribe, the Chinook Indian Tribe, have been consulted early in and throughout the Section 106 process and regarding this Agreement and invited to concur in the Agreement; and

WHEREAS, FTA has consulted with the above-listed Indian tribes for which the Area of Potential Effect (APE) has cultural significance, and have invited the tribes to sign this Agreement as concurring parties; and

WHEREAS, FTA in consultation with the Oregon SHPO and the interested tribes have defined the undertaking's APE in accordance with 36 CFR 800.16(d) to cover all construction or operation activities associated with the undertaking as well as those areas needed for wetland mitigation, stormwater facilities, staging and casting yards; and

WHEREAS, the FTA, in conjunction with Metro and TriMet, and in consultation with the Oregon SHPO, conducted cultural resource studies in accordance with 36 CFR 800 as part of project planning and the preparation of the FEIS to identify and evaluate historic properties, which are resources listed on or eligible for listing in the National Register of Historic Places (National Register), that are located within the APE; including archaeological surveys to facilitate archaeological site evaluation and assessment of effects in the area where ground-disturbing activities might affect archaeological historic properties; and inventory, evaluation and assessment of effects to historic buildings and structures that are historic properties identified within the areas of potential effects; and

WHEREAS, research investigations for the FEIS, employing professional techniques defined in a research design agreed to by Oregon SHPO, determined the likely presence of archaeological historic properties and outlined their potential character (predictive assessment), providing reasonable estimates of the potential adverse effects (e.g., likelihood that potential resources would need to be protected in place, and that opportunities exist to avoid, minimize and/or mitigate impacts); and

WHEREAS, access to conduct archaeological investigations necessary to discover potential buried historic properties is restricted in portions of the Project due to the actively and intensively used urban landscapes, such as roadways, sidewalks, existing buildings, and parking lots, and conducting archaeological subsurface excavations in these areas is practically and logistically problematic or prevented; and

WHEREAS, some private properties within the direct effect area of the APE have not been surveyed due to access restrictions or are occupied by existing structures; and

WHEREAS execution and implementation of this Agreement satisfies the responsibilities the National Historic Preservation Act Section 106 process, as codified in 36 CFR 800 Subpart B; and

WHEREAS, FTA and the Oregon SHPO have agreed that the undertaking will have an adverse effect upon three historic properties and FTA has consulted with the Oregon SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 CFR 800) to mitigate the Adverse Effect on these properties; and

WHEREAS, FTA has determined, and SHPO has concurred, that the undertaking will have no adverse effect upon certain other historic properties, as outlined in the FEIS and associated technical reports; and

WHEREAS, Metro and TriMet have participated in the consultation with tribes; and other information gathering has not identified any Traditional Cultural Properties in the Project area; and

WHEREAS, while background research and related archaeological investigations have not identified human remains in the APE, an Inadvertent Discovery Plan to address the potential discovery of human remains during construction has been negotiated among signatories and consulting parties and is in place for the Project; and

WHEREAS, in accordance with 36 CFR 800.6(a) (1), FTA has notified the ACHP of its adverse effect determination and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a) (1) (iii); and

WHEREAS, pursuant to 36 CFR 800.4(b)(2), 800.5(a)(3) and 800.6(c)(6), and because access to some areas is practically and logistically restricted due to factors such as property-owner consent, the presence of buildings, or due to the active use of roads that prevent or preclude full identification and evaluation of archaeological resources that may be historic properties prior to the approval of the undertaking, FTA, Metro, TriMet, and the Oregon SHPO, in consultation with consulting parties and the ACHP, have chosen to implement a phased process and have developed procedures in this Agreement to ensure that the identification and evaluation of archaeological historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to properties discovered during implementation of the undertaking are properly coordinated with all phases of the design, construction, and operation of the undertaking; and

WHEREAS, in accordance with 36 CFR 800.2(d)(3), FTA used procedures under the NEPA and NHPA to involve the public in the undertaking and solicit their views on historic properties and has distributed the SDEIS and FEIS to appropriate state and federal agencies as well as other stakeholders, partners, and the public; and

WHEREAS, pursuant to 36 CFR 800.13, FTA, TriMet, the Oregon SHPO and the ACHP have developed procedures in this Agreement to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to previously identified historic properties and/or properties discovered during implementation of the undertaking are properly coordinated with all phases of the design and construction of the undertaking; and

WHEREAS, the FTA will issue a Record of Decision (ROD) following the publication of the FEIS issued by the FTA, anticipated in Spring/Summer 2010; and

NOW, THEREFORE, FTA, TriMet and Oregon SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

-STIPULATIONS-

FTA, in cooperation with Metro and TriMet, will ensure that the following measures are carried out:

I. GENERAL REQUIREMENTS

A. As a condition of the award of any assistance under the Federal-Aid Highway and the New Starts 5309 Programs, FTA shall require that Metro and TriMet carry out the requirements of this Agreement, and all applicable laws.

B. Signatories and Consulting Parties shall keep sensitive cultural resources information confidential to the extent allowed by state and federal law. Information concerning archaeological sites is exempted from the Freedom of Information Act (FOIA) as per ORS 192.501(11) and should be excluded from all public documents and stipulations placed upon confidential documents that only approved personnel and/or qualified archaeologists [as defined by ORS 390.235(6)(b)] can access.

C. Activities carried out pursuant to this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 as revised) as well as existing standards and guidelines for historic preservation activities established by the Oregon SHPO.

D. FTA, Metro, and TriMet will ensure that all work carried out under this Agreement is conducted by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR 61).

E. All resource management documents as specified under this Agreement will be completed prior to any construction and within two months of the release of the 90% design documents for the Project. Nothing in this Agreement shall be construed as indicating acceptance by the Consulting Parties of the resource management documents, which have yet to be developed.

FTA shall in good faith attempt to reach a consensus on the contents of the resource management documents with the Consulting Parties.

The confidential resource management documents, available to approved personnel, pertain to the archaeological portion of the Project and include the following.

1. Monitoring Plan & Inadvertent Discovery Plan (Attachment A).
2. Documentation for archaeological investigations not yet completed.
 - a. High Probability Areas to be tested and archaeological sites that were not investigated prior to the FEIS completion due to access.
 - b. Archaeological sites found during construction monitoring. (This report would be done during or by the end of construction in 2015.)
3. Mitigation/treatment plans for significant archaeological sites.
 - a. For sites found during High Probability Area testing and archaeological sites that were not investigated prior to the FEIS completion due to access, if they are found to be significant resources.
 - b. Archaeological sites found during construction monitoring. (This report would be done during or by the end of construction in 2015.)

F. FTA shall retain ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes. Notwithstanding any other provision of this stipulation, FTA shall honor the request of any of the Indian tribes listed herein for direct government-to-government consultation regarding the Project.

G. Study of portions of the Project's APE have been sufficiently completed for Section 106 review prior to the publication of the FEIS and, notwithstanding the Project's need to comply with inadvertent discovery requirements, no further Section 106 activities are expected to be conducted in those areas where cultural resource studies have been completed and SHPO has concurred that no further archaeological investigations are necessary. Attachment A is based on the Section 106 Technical Report, including its inventory report, and defines those areas where additional steps, such as archaeological monitoring during construction, are needed.

H. Definitions in 36 CFR 800.16 will be used for purposes of this Agreement.

II. PUBLIC PARTICIPATION

FTA, Metro, and TriMet have ensured that public participation in the Section 106 review process has been carried out in a manner that has also been integrated with FTA's public participation and review requirements pursuant to 23 CFR Part 771, leading to the publication of the FEIS. Documentation on historic and archaeological properties (some with locational information removed) have been made available for review to the general public offices as part of the SDEIS and FEIS publication and related public review. In accordance with Section 304 of the National Historic Preservation Act of 1966, as amended, the signatories and participating Concurring Parties to this Agreement will withhold from disclosure to the public, information about the location, character, or ownership of a historic property if it is determined that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to a historic property, or (3) impede the use of a traditional religious site by practitioners (4) contains archaeological site description or location information.

The views of the Metro, TriMet, interested parties, and the general public will be considered by FTA with respect to the terms of this Agreement. Should any member of the public raise a timely and substantive objection pertaining to the manner in which the terms of this Agreement are carried out, at any time during its implementation, the FTA shall take the objection into account by consulting with the objector to resolve the objection. When FTA responds to an objection, it shall notify Metro and TriMet of the objection and the manner in which it was resolved. FTA may request assistance of the Metro and TriMet to resolve objections.

III. MITIGATING ADVERSE EFFECTS TO SPECIFIC HISTORIC PROPERTIES

A. Royal Foods Warehouse and Office, 2425 SE 8th Ave. Portland

The warehouse is eligible for the National Register of Historic Places (NRHP) and will be adversely affected by demolition. Mitigation measures include:

- a. Documentation shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
 1. Architectural description of the building: *Description should not be less than 500 words and use appropriate architectural terms.*
 2. Building history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
 3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
 4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as topoquest.com and marked by hand.*
 5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
 6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each space should be labeled.*
 7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website:
http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml*
 8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*

B. Westmoreland Park, 7605 SE McLoughlin

Westmoreland Park has been determined eligible as a NRHP Historic District and will be adversely affected by converting the Duck Pond into a riparian area. Mitigation measures include:

- a. Documentation for Westmoreland Park shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
1. Architectural description of the building [property]: *Description should not be less than 500 words and use appropriate architectural terms.*
 2. Building [property] history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building [property] or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
 3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
 4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as topoquest.com and marked by hand.*
 5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
 6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use or each space should be labeled.*
 7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website:
http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml*
 8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*
- b. Publish documentation, as described above, of the park's history on the City of Portland website for duration of not shorter than June 2013 to December 2015. The website will be professionally designed.
- c. As additional mitigation, the Project will develop an interpretive panel or display at the Bybee Station, describing the historic attributes and features of Westmoreland Park, including the Duck Pond and its relationship to WPA-era projects, and also the general timeline for development of Westmoreland Park and adjacent neighborhoods of the City by date of Project completion (December 2015). The Project will consult with a historian that meets Secretary of Interior Standards and will ask SHPO to comment to the design.
- d. The Project, with the City of Portland, will prepare National Register nomination materials for a different park within the City, and will formally submit these materials to the SHPO for approval. The Project will (i) consult with SHPO to determine whether the selected property is indeed eligible, (ii) provide draft documents to SHPO for comment, and (iii) make all

necessary revisions to meet the requirements of the National Park Service for National Register nominations. Nomination materials are to be completed within 24 months of the execution of this agreement. This stipulation will be considered complete once the SHPO has found the nomination to be complete and ready for submission to the Keeper of the National Register.

- e. TriMet will execute an interlocal agreement with the City of Portland incorporating the above conditions prior to providing funds for construction within Westmoreland Park.

C. Derwey House, 2206 SE Washington, Milwaukie

The R. Derwey House has been determined eligible for the NRHP and will be adversely affected by changing the setting and acquiring approximately 10 feet of land from the side yard near the railroad tracks. Mitigation measures include:

- a. Documentation shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
1. Architectural description of the building: *Description should not be less than 500 words and use appropriate architectural terms.*
 2. Building history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
 3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
 4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as topoquest.com and marked by hand.*
 5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
 6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use or each space should be labeled.*
 7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website:*
http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml

8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*

D. Other Historic Resources

Some historic properties have been found to have “no adverse effect” by the Project and will be minimally affected. For those NRHP-eligible resources the following measures are included:

1) According to the Noise and Vibration Technical Report for the FEIS, projected increases in noise and vibration require mitigation for four (4) additional historic built environment resources at 1635 SE Rhone in Portland, and 2405 SE Harrison, 2326 SE Monroe, and 2313 SE Wren in Milwaukie. After mitigation, these impacts would be reduced to levels that have “no adverse effect.” The mitigation measures would not alter the characteristics for which the properties are considered eligible for the NRHP. However, because mitigation for the impacts may require residential sound insulation such as window replacement, the mitigation action could have adverse effects to the historic buildings if done inappropriately. This Agreement requires that all noise and vibration impacts meet the Secretary of the Interior Standards for Rehabilitation and be finished by December 2014. This includes:

- a) Replace in kind an entire window using the same sash and pane configuration and other design details.
- b) Retrofit the existing windows to meet noise mitigation criteria if possible.
- c) The property owner must be consulted
- d) SHPO must approve any mitigation measures.

2) For 2313 SE Wren in Milwaukie and 1635 SE Rhone in Portland where a small right of way acquisition is required, the property owners will be fully compensated in accordance with FTA policy and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Where landscaping will be removed from the properties due to construction, replacement landscaping shall be offered to mitigate the visual impact by December 2014.

IV. MITIGATING ADVERSE EFFECTS TO SPECIFIC ARCHAEOLOGICAL SITES

Identification of archaeological and historic archaeological properties and assessment of effect have been completed for areas within which investigations were allowed by landowners and access has been secured by the Project. No archaeological resources that are eligible for listing in the NRHP have yet been identified within the portion of the Project APE where there may be direct impacts. If any archaeological sites are discovered that may be eligible for listing on the National Register of Historic Place, then consultation with SHPO regarding documentation, evaluation, assessment, and mitigation measures, if necessary, will be necessary.

V. PRINCIPLES TO COMPLETE ARCHAEOLOGICAL INVESTIGATIONS

Archaeological excavations have not been completed for all areas of the Project where there may be construction activities within the APE. Some areas have been investigated and some areas contain archaeological resources that may require additional archaeological investigations. The preliminary field findings and recommendations to complete inventory, resource evaluations, and assessment of effect on archaeological historic properties are included in Attachment A.

Circumstances dictate that some of the activities needed to complete all steps of the Section 106 process will be carried out after the FEIS/ROD is issued, and will follow the protocols established in Attachment A.

VI. PROGRAMMATIC APPROACH FOR ARCHAEOLOGICAL RESOURCES

A. FTA will ensure that if completion of any additional subsurface testing, inadvertent discovery, and site eligibility determinations result in additional findings of effect, these findings will be reviewed by the Oregon SHPO and consulting Tribes. The Oregon SHPO shall review all information regarding site eligibility. If SHPO concurs that there are no archaeological sites eligible for listing on NRHP and/or there are no effects or adverse effects to significant archaeological resources, then no further archaeological investigations will be necessary. If the findings reveal there may be an adverse effect to a significant archaeological resource, then the FTA will notify SHPO and the appropriate Tribes and continue consultation to resolve the adverse effects. FTA will review the effects and provide a mitigation plan with a range of solutions to be considered for implementation as well as the level of effort for the data recovery, analysis, curation, and interpretation options and provide this information to SHPO and the appropriate Tribes for concurrence.

B. The options to be considered will take into account whether the significance of the resource calls for preservation in place, data recovery, and documentation through monitoring, further research, or other mechanisms. All proposed mitigation options will be compatible with the historic qualities and characteristics that qualify the property as eligible for listing in the National Register, and will be developed in consultation with the Signatories to this Agreement.

C. Archaeological treatment plans will be developed for any sites that are determined eligible for listing on the National Register and that may be adversely affected by the Project. To minimize the adverse effect to eligible archaeological sites the plan will consider a variety of protective measures such as construction modifications, buffering, protective walls or fencing and construction monitoring. For those archaeological sites determined to be eligible and where adverse impacts are unavoidable, a mitigation plan is necessary. This plan may include a variety of measures such as data recovery plan or other alternatives.

D. Following the completion of the mitigation phase of the process, FTA will ensure that the applicable analysis, documentation, and report preparation and submittal is completed on the mitigation prior to the start or continuation of construction in affected locations. All cultural material recovered and data produced on public non-federal land as a result of the Project will be curated in a permanent curation facility approved by the Oregon SHPO in accordance with 36 CFR 79 and tribal consultation, as dictated by the SHPO permit. Artifacts collected on private land will be curated as dictated by the SHPO permit. All curation actions shall be completed by June 2015.

VII. REVIEW OF FUTURE DESIGN CHANGES

If any design changes having the potential to cause effects to historic properties are made to the undertaking outside the current APE, including additional staging, construction access, wetland or stormwater mitigation sites, FTA, in consultation with Metro and TriMet, will conduct a

cultural resources assessment as required by 36 CFR 800, to identify and evaluate the effects upon historic properties, and will consult to resolve any additional adverse effects.

FTA will ensure that avoidance of adverse effects to historic properties is the preferred treatment during the design phase and will utilize all feasible, prudent and practicable measures to avoid adverse effects. All design enhancements that may affect historic properties in the Project corridor will be subject to review and concurrence by FTA, Metro and TriMet. The Project final mitigation plan will address potential design modifications and aesthetic treatments foreseen in final design.

VIII. ARCHAEOLOGICAL RESOURCES NOT PREVIOUSLY IDENTIFIED

This section describes procedures to be followed by the construction contractors and Project engineers, which ensure appropriate consideration of archaeological resources if encountered during construction. The FTA and Project contractors shall:

- 1) Discuss pre-construction requirements, including:
 - a) Educational briefings by professional archaeologists,
 - b) Briefing materials for construction contractor personnel and FTA engineers and inspectors;
 - c) Protocol for inadvertent discovery, including contact telephone numbers for contractor personnel and FTA engineers and inspectors as per ORS 97.740-97.760 (Indian Graves and Protected Objects) and ORS 358.905-358.955 (Archaeological Objects and Sites).
- 2) Provide background information on the context of anticipated resources within the Project to the construction contractor;
- 3) Identify in lay terms the nature of primary archaeological resources indicators (e.g. high densities of fire modified rock; high density historical municipal or industrial middens) that may represent a significant resource and which require consideration by professional archaeologist and consideration by Consulting Parties;
- 4) Identify relevant procedures and contractor responsibilities for the inadvertent discovery of archaeological objects or sites (ORS 358.905-.955); including site protection and evaluation by a qualified archaeologist; and
- 5) Ensure that the Project plans and documents note the areas to be included in construction monitoring under the supervision of a qualified archaeologist and that all archaeological site locations are kept confidential.

IX. INADVERTENT DISCOVERY OF HUMAN REMAINS

If human remains are encountered during the implementation of the Project activities, all activity in the vicinity of the discovery will cease and the appropriate authorities notified as outlined in the Inadvertent Discovery Plan as per ORS 97.740-.760

(Attachment A).

X. DISPUTE RESOLUTION

Should any Signatory or Concurring Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Signatory parties will consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:

Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP will provide FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. FTA will then proceed according to its final decision.

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FTA will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the Agreement, and provide them and the ACHP with a copy of such written response.

FTA's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XI. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

XII. DURATION AND TERMINATION

This Agreement will take effect immediately upon execution by the Signatory parties. FTA will send a copy of the executed Agreement to the ACHP, regardless of ACHP participation in the process. The terms of this Agreement will be satisfactorily fulfilled upon completion of the Project. Prior to such time, FTA may consult with the other participating parties to reconsider the terms of the Agreement and propose its amendment. Unless terminated, this Agreement will be in effect until December 2015 or such time as FTA, in consultation with all Signatory and Concurring Parties, determines that all of its terms have been satisfactorily fulfilled, whichever is later.

If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party will ensure immediately consult with the other parties to attempt to develop an amendment per Stipulation XI above. If within thirty days (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other Signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, FTA must either (a) execute a Memorandum of Agreement pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. FTA will notify the Signatories as to the course of action it will pursue.

XIII. Archeological Resources Retrieved and Preserved.

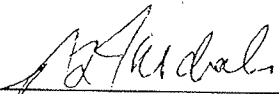
If archeological resources are retrieved and deemed by the SHPO to be significant and worthy of preservation, any costs associated with such resource retention shall be the responsibility of TriMet.

XIV. Compliance with Section 106.

With the execution and implementation of this Agreement the responsibilities the National Historic Preservation Act Section 106 process, as codified in 36 CFR 800 Subpart B are deemed satisfied.

SIGNATORIES:

Federal Transit Administration



Mr. Richard Krochalis, Region X Administrator

Date 6/17/10

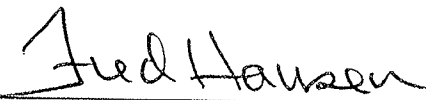
Oregon State Historic Preservation Officer



Roger Roper, Assistant Director, Heritage Programs

Date 6/15/10

Tri-County Metropolitan Transportation District of Oregon







Fred Hansen, General Manager

Date 6/14/10

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NOTES:
SEE SHEET L15C-211 FOR WETLAND SECTIONS.

- WETLAND TYPES**
-  PEM/RFL (19,030 SF)
 -  PSS/RFL (11,900 SF)
 -  PFO/RFL (16,000 SF)
 -  WETLAND BUFFER

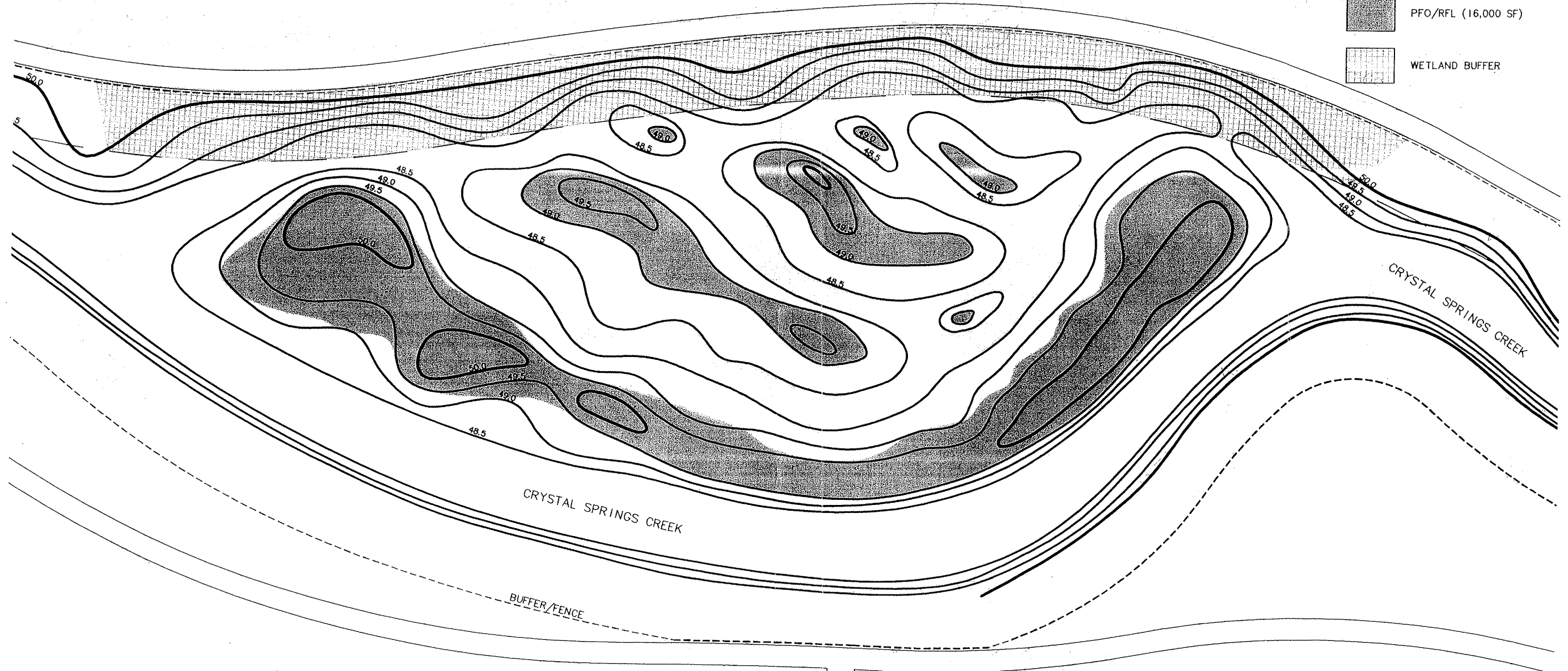
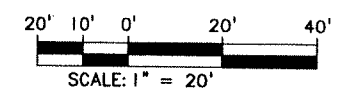


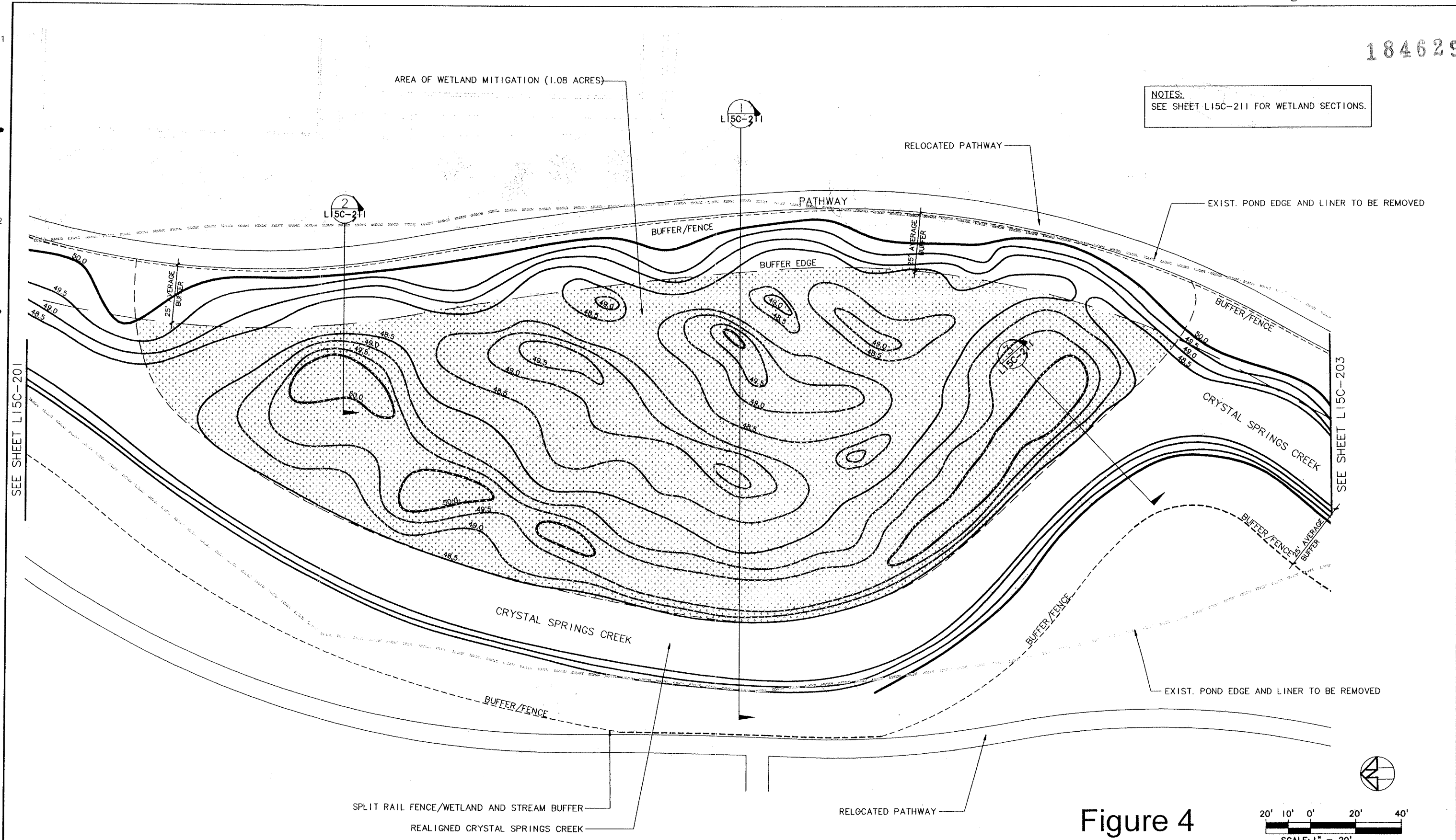


Figure 3



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NOTES:
SEE SHEET L15C-211 FOR WETLAND SECTIONS.

Figure 4

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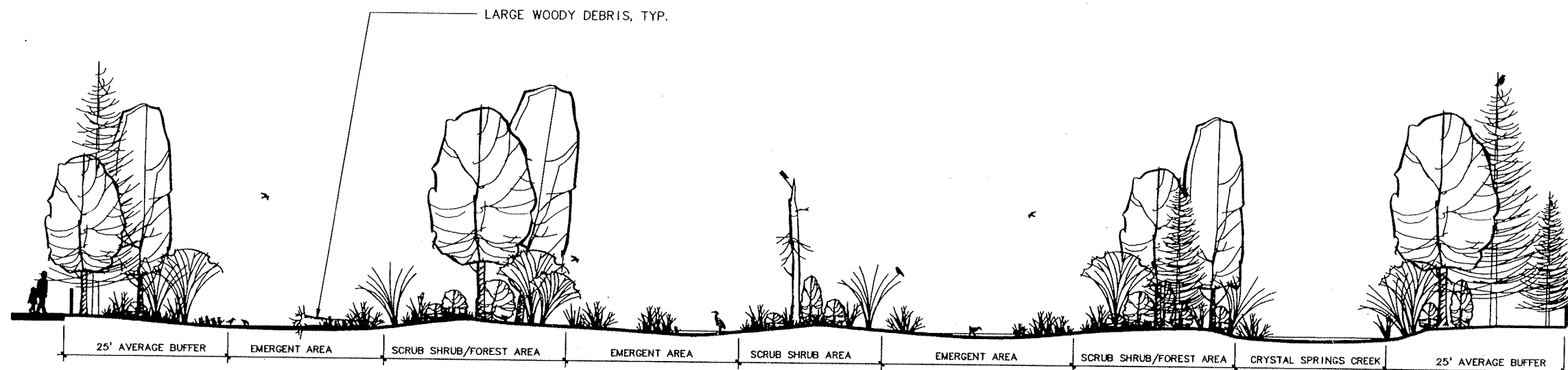
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JMS CHECKED	DATE
CMR APPROVED	DATE

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
 CAPITAL PROJECTS AND FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

PORTLAND TO MILWAUKIE LRT
SEGMENT C
 WESTMORELAND DUCK POND
 LANDSCAPE RESTORATION PLAN
 GRADING PLAN

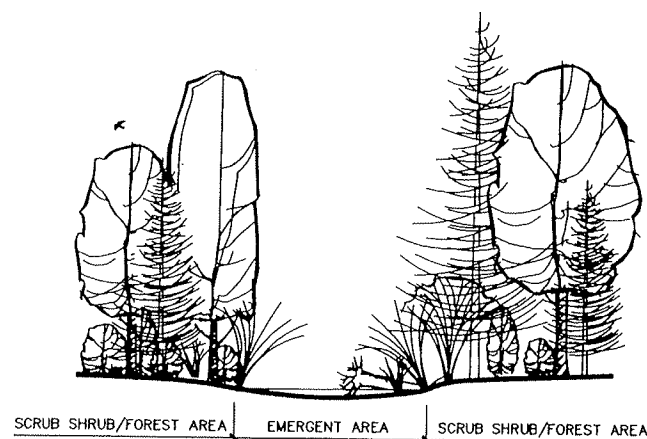
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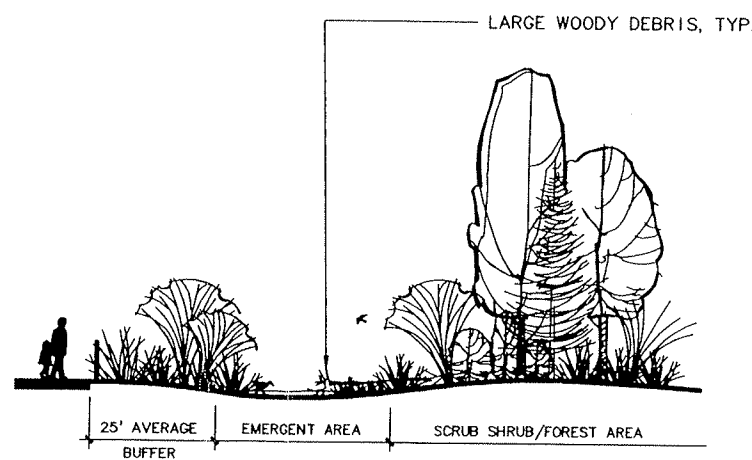
SECTION 1

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SECTION 2

SCALE: HORIZONTAL 1" = 10'-0", VERTICAL 1" = 10'-0"

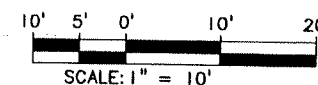


SECTION 3

SCALE: HORIZONTAL 1" = 10'-0", VERTICAL 1" = 10'-0"



Figure 5



					RAH DESIGNED DATE: _____	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON			PORTLAND TO MILWAUKIE LRT SEGMENT C					
					DRAWN DATE: _____	Wagon Wheel Landscape Architecture 319 SW Washington Street Suite 820 Portland, Oregon 97204			CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232			WESTMORELAND DUCK POND LANDSCAPE RESTORATION PLAN SECTIONS		
					JMS CHECKED DATE: _____	TRI MET								
					CMR APPROVED DATE: _____	SUBMITTED: _____ DATE: _____			APPROVED: _____ DATE: _____					
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								1" = 10'-0"	L15C-211	RH090207JB				

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NOTES:
 SEE SHEET L15C-211 FOR WETLAND SECTIONS.
 SEE SHEET L15C-220 FOR PLANTING LEGEND.

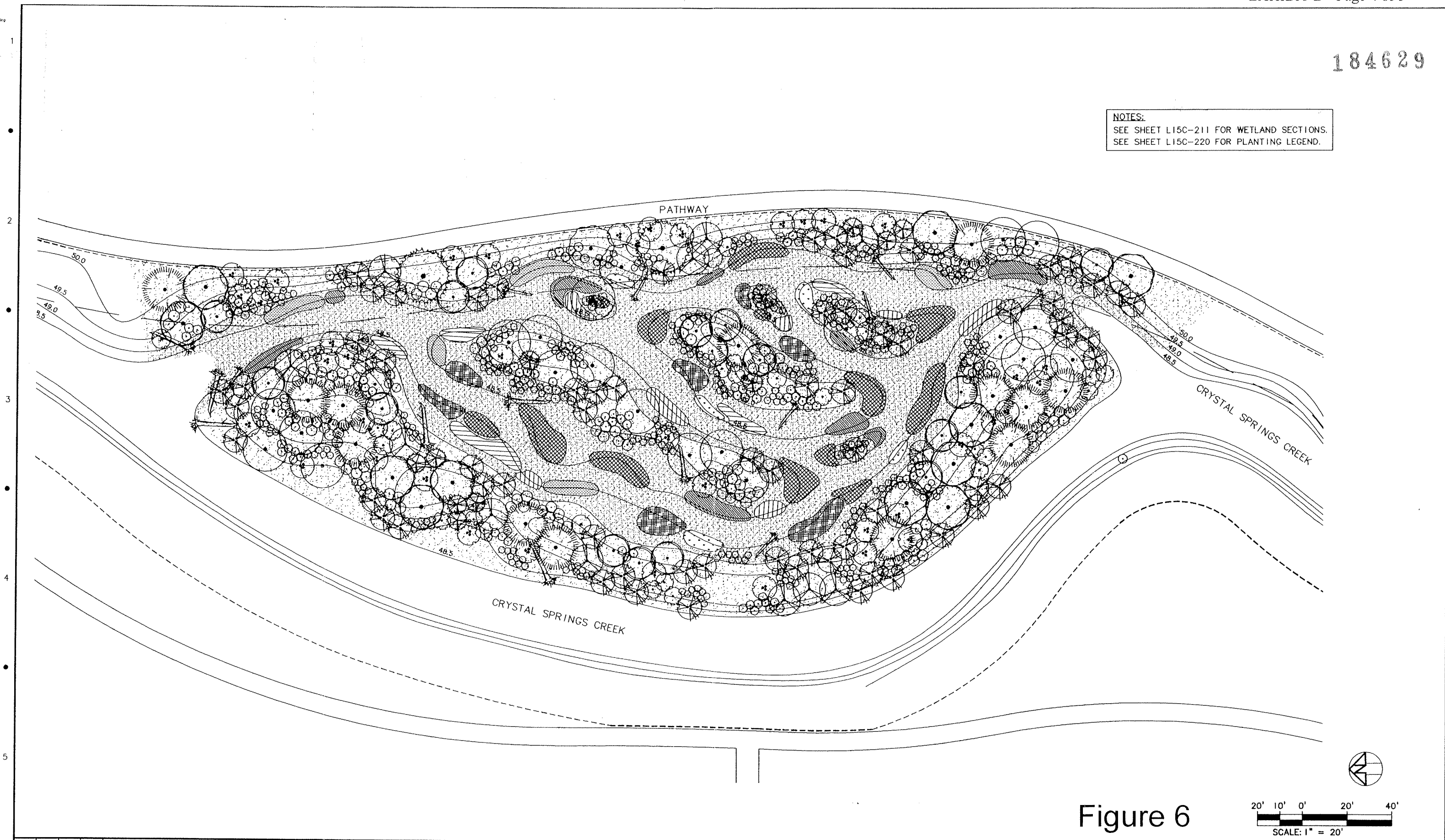
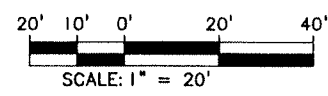


Figure 6



					RAH DESIGNED _____ DATE _____ DRAWN _____ DATE _____ JMS CHECKED _____ DATE _____ CMR APPROVED _____ DATE _____	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON 319 SW Washington Street Suite 820 Portland, Oregon 97204		CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232		PORTLAND TO MILWAUKIE LRT SEGMENT C WESTMORELAND DUCK POND LANDSCAPE RESTORATION PLAN PLANTING PLAN			
NO.	DATE	BY	APPD.	REVISIONS	SUBMITTED:	DATE:	APPROVED:	DATE:	SCALE:	DRAWING NO.:	CONTRACT NO.:	SHEET NO.:	
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PLANT LEGEND - FORESTED/SCRUB SHRUB PLANTS - HABITAT TYPES PFO/PSS

TREES	CODE	BOTANICAL NAME / COMMON NAME	CONT	CALIPER/HEIGHT	QUANTITY	WETLAND INDICATOR STATUS
	AC	ACER CIRCINATUM / VINE MAPLE	5 GAL	8' HT., 5-7 STEMS MIN.	40	FAC-
	AR	ALNUS RUBRA / RED ALDER	5 GAL	0.75" CAL	12	FAC
	CD	CRATAEGUS D. SUKSDORFII / BLACK HAWTHORN	5 GAL	0.75" CAL	18	FAC
	FL	FRAXINUS LATIFOLIA / OREGON ASH	5 GAL	0.75" CAL	21	FACW
	PP	PINUS PONDEROSA / PONDEROSA PINE	15 GAL	6'-8' HT.	3	FACU-
	PB	POPULUS B. TRICHOCARPA / BLACK COTTONWOOD	5 GAL	0.75" CAL	3	FAC
	PE	PRUNUS EMARGINATA / BITTER CHERRY	5 GAL	0.75" CAL	12	FAC
	SP	SALIX LASIANDRA / PACIFIC WILLOW	1 GAL	0.5" CAL	71	FACW+
	TB	TAXUS BREVIFOLIA / PACIFIC YEW	5 GAL	4'-5' HT.	11	NI
	TP	THUJA PLICATA / WESTERN RED CEDAR	15 GAL	6'-8' HT.	14	FAC
SHRUBS	CODE	BOTANICAL NAME / COMMON NAME	CONT			
	COR	CORNUS STOLONIFERA / DOGWOOD	5 GAL		126	FACW
	PHY	PHYSOCARPUS CAPITATUS / PACIFIC NINEBARK	2 GAL		79	FACW-
	ROS	ROSA PISOCARPA / CLUSTERED WILD ROSE	2 GAL		97	FAC
	RUB	RUBUS SPECTABILIS / SALMONBERRY	2 GAL		191	FAC+
	SAM	SAMBUCUS CERULEA / BLUE ELDERBERRY	5 GAL		18	FACU
	SAR	SAMBUCUS RACEMOSA / RED ELDERBERRY	5 GAL		18	FACU
	SPI	SPIRAEA DOUGLASII / WESTERN SPIRAEA	2 GAL		126	FACW

PLANT LEGEND - EMERGENT AREA PLANTS - HABITAT TYPE PEM

GROUND COVERS	CODE	BOTANICAL NAME / COMMON NAME	CONT	QUANTITY	WETLAND INDICATOR STATUS
	CAOB	CAREX OBNUPTA / SLOUGH SEDGE	1 GAL @ 18" OC	1,0120 S.F.	OBL
	CAST	CAREX STIPATA / SAWBEAK SEDGE	1 GAL @ 18" OC	600 S.F.	OBL
	ELPA	ELEOCHARIS PALUSTRIS / GREAT SPIKE RUSH	1 GAL @ 18" OC	631 S.F.	OBL
	JUPA	JUNCUS EFFUSUS PACIFICUS / COMMON RUSH	1 GAL @ 18" OC	847 S.F.	FACW
	JUE	JUNCUS ENSIFOLIUS / SWORDLEAF RUSH	1 GAL @ 18" OC	992 S.F.	FACW
	SALA	SAGITTARIA LATIFOLIA / LANCE-LEAFED ARROWHEAD	1 GAL @ 18" OC	1,184 S.F.	OBL
	SCMI	SCIRPUS MICROCARPUS / SMALL-FRUITED BULRUSH	1 GAL @ 18" OC	690 S.F.	OBL
	SPCE	SPIRANTHES ROMANZOFFIANA / HOODED LADY'S TRESSES	1 GAL @ 18" OC	362 S.F.	FACW

PLANT LEGEND - EMERGENT AREA SEEDING - HABITAT TYPES PEM

WETLAND SEED MIX CODE	BOTANICAL NAME / COMMON NAME	RATE			
	ALOPECURIS GENICULATIS / WATER FOXTAIL	2 LBS/ACRE	27,343 S.F.	FACW+	OBL
	BECKMANNIA SYZIGACHNE / AMERICAN SLOUGH GRASS	3 LBS/ACRE			
	DESCHAMPSIA CESPITOSA / TUFTED HAIRGRASS	2 LBS/ACRE			
	GLYCERIA OCCIDENTALIS / WESTERN MANNA GRASS	3 LBS/ACRE			
	ELEOCHARIS OBTUSA / BLUNT SPIKE RUSH	3 LBS/ACRE			

PLANT LEGEND - UPLAND AREA SEEDING - HABITAT TYPES PFO/PSS

UPLAND SEED MIX CODE	BOTANICAL NAME / COMMON NAME	RATE			
	BROMUS CARINATUS / CALIFORNIA BROME	2 LBS/ACRE	31,520 S.F.	NOL	FACW
	FESTUCA ROEMERI / ROEMER'S FESCUE	3 LBS/ACRE			
	DESCHAMPSIA CESPITOSA / TUFTED HAIRGRASS	2 LBS/ACRE			
	ELYMUS GLAUCUS / BLUE WILD RYE	20 LBS/ACRE			

LEGEND - MISCELLANEOUS

LARGE WOODY DEBRIS

EXISTING TREES

BUFFER/FENCE WETLAND/STREAM BUFFER/FENCE

NOTE: UPLAND AREAS TO BE IRRIGATED WITH TEMPORARY SYSTEM UNTIL PLANT ESTABLISHMENT.

Figure 7

				RAH DESIGNED _____ DATE _____ DRAWN _____ DATE _____ JMS CHECKED _____ DATE _____ CMR APPROVED _____ DATE _____	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON 319 SW Washington Street Suite 820 Portland, Oregon 97204		CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232		PORTLAND TO MILWAUKIE LRT SEGMENT C PLANTING LEGEND LANDSCAPE RESTORATION PLAN PLANTING LEGEND			
NO.	DATE	BY	APPO.	REVISIONS	SUBMITTED:	DATE:	APPROVED:	DATE:	SCALE:	DRAWING NO.:	CONTRACT NO.:	SHEET NO.:
									1"=20'-0"	L15C-220	RH090207JB	

EXHIBIT C - FEDERAL REQUIREMENTS (10/10)1. No Government Obligation To Third Parties

TriMet and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statement and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C 3801 et seq. And U.S. DOT regulations, "Program Fraud civil Remedies, " 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Audit and Inspection of Records

A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment

under this contract.

B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4. Federal Changes (10/10)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (*Form FTA MA(17) dated October 1, 2010*) between TriMet and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal

policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of Federal Transit Administration Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TriMet requests which would cause TriMet to be in violation of the FTA terms and conditions.

7. Disadvantaged Business Enterprise

A. Policy. TriMet has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TriMet has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TriMet has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of TriMet to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

B. Contractor and Subcontractor Obligation. Contractor and/or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry

out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

8. Debarment and Suspension (10/04)

The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Lobbying

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- (1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) The prohibition does not apply as follows:
- (i) Agency and legislative liaison by Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (c) For purposes of paragraph B (2) (i) (a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or

regulation, and any other requirements in the actual award documents.

- (d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).
- (iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

- (iv) Professional and technical services by Other than Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or

regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer

agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

10. Clean Air

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. 7401 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirement in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Clean Water Requirements

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

12. Environmental Violations

For all contracts and subcontracts in excess of \$100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

13. Energy Conservation

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

14. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. Cargo Preference

Contractor agrees:

- A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration,

Washington, DC 20590, and to TriMet (through the contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.

- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. Fly America

If this contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in subcontracts at every tier. The Contractor shall submit, if a foreign carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event provide a certificate of compliance with Fly America Requirements. 41 CFR Part 301-10.

17. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

18. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

19. Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section

1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to

paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding – TriMet shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, TriMet may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to TriMet for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

20. Contract Work Hours and Safety Standards Act

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the

Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

21. Buy America (03/06)

If this contract is for Construction and/or the Acquisition of Goods or Rolling Stock (valued at more than \$100,000), the Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661 as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. and include, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

END OF EXHIBIT -A - FEDERAL REQUIREMENTS